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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 M.W. (Minor Child), HAJA SILLAH,  
8 DEMBO WAGGEH,

9 Plaintiffs,

10 v.

11 SAFEWAY, INC.,

12 Defendant.

CASE NO. 2:18-cv-01404-BAT

**ORDER APPROVING MINOR  
SETTLEMENT**

13 Before the Court is the Supplemental Stipulated Motion for Approval of Minor  
14 Settlement of Plaintiffs Haja Sillah, Dembo Waggeh and minor son, M.W., and Defendant  
15 Safeway, Inc. Dkt. 60. The motion is based on the parties' prior Stipulated Motion with attached  
16 exhibits (Dkt. 49), supporting declarations (Dkts. 50 and 51), and the Independent Counsel's  
17 Report on Adequacy of the Minor Settlement (Dkt. 59). The parties stipulated to the assignment  
18 of this motion for approval of the minor settlement to a United States Magistrate Judge. Dkt. 48.  
19 This matter was assigned to the undersigned for that purpose on July 24, 2019.

20 The undersigned deferred ruling on the reasonableness of the parties' proposed settlement  
21 pending appointment of independent counsel pursuant to LCR 17. Dkt. 52. On July 31, 2019,  
22 Attorney Justo Gonzalez of Stokes Lawrence, P.S. was appointed as pro bono counsel for M.W.  
23 pursuant to LCR 17(c) to investigate the adequacy of the settlement under Washington state law  
and provide the Court with a report prepared pursuant to Washington Superior Court Special

1 Proceedings Rule (“SPR”) 98.16W(e). Dkt. 56. On August 1, 2019, Mr. Gonzalez and his  
2 colleague, Amy Alexander, (hereinafter “Independent Counsel”) entered a notice of appearance  
3 on behalf of M.W. Dkt. 57. On September 16, 2019, they filed a report recommending approval  
4 of the settlement stipulated to by the parties. Dkt. 59. As pro bono counsel, they have not  
5 requested fees or costs. *Id.*, ¶ 14.

6 Based on the parties’ stipulated facts, the report of Independent Counsel, and remaining  
7 record, the Court concludes the proposed minor settlement is reasonable and in the best interests  
8 of M.W.

## 9 DISCUSSION

### 10 A. Court’s Duty to Safeguard Interests of Minors

11 “District courts have a special duty, derived from Federal Rule of Civil Procedure 17(c),  
12 to safeguard the interests of litigants who are minors.” This duty includes conducting “its own  
13 inquiry to determine whether the settlement serves the best interests of the minor.” *Robidoux v.*  
14 *Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (quoting *Dacanay v. Mendoza*, 573 F.2d 1075,  
15 1080 (9th Cir. 1978)); *see also Salmeron v. United States*, 724 F.2d 1357, 1363 (9th Cir. 1983)  
16 (“a court must independently investigate and evaluate any compromise or settlement of a minor’s  
17 claims to assure itself that the minor’s interests are protected, even if the settlement has been  
18 recommended or negotiated by the minor’s parent or guardian ad litem”). When considering  
19 whether to approve a proposed settlement of federal claims involving minors, the Court must  
20 consider whether the settlement is fair and reasonable in light of the facts and specific claims at  
21 issue and recoveries in similar cases, but without regard to the fee the adult plaintiffs agreed to  
22 pay plaintiff’s counsel. *Id.* at 1181-82. However, where only state claims are involved, the  
23 typical practice of district courts in this Circuit is to apply state law when evaluating the

1 proposed settlement. *Robidoux*, 638 F.3d at 1181 (“In the district courts in the Circuit, the typical  
2 practice has been to apply state law and local rules governing the award of attorney’s fees . . .”).

3 Defendants removed this case from state court based on the Court’s diversity jurisdiction  
4 and Plaintiffs allege only state law claims for personal injuries based on negligence and breach  
5 of duty of care. Dkt. 8; Dkt. 8-3, pp. 1-4. As there are no federal claims before the Court, the  
6 Court looks to Washington state law to determine the fairness of the proposed settlement.  
7 “Under Washington law[,] parents may not settle or release a child’s claim without prior court  
8 approval.” *Scott v. Pac. W. Mountain Resort*, 834 P.2d 6, 11 (Wash. 1992); SPR 98.16W(a)  
9 (“[T]he court shall determine the adequacy of the proposed settlement on behalf of [an  
10 unemancipated minor] and reject or approve it.” Washington law also provides for the  
11 appointment of a settlement guardian ad litem to assist the court in determining the adequacy of  
12 the proposed settlement,” and to “conduct an investigation and file a written report with the court  
13 recommending approval and final disposition . . .” SPR 98.16W(c). The settlement guardian ad  
14 litem’s report shall be “in depth appropriate to the magnitude of injuries and settlement” and  
15 shall include a discussion regarding expenses and fees for which payment is requested.” SPR  
16 98.16W(e)(12).

17 After reviewing discovery and medical records, interviewing M.W.’s mother, and  
18 researching comparable damages awards, Independent Counsel recommends approval of the  
19 proposed settlement form, documents, and amounts. The recommendation is based on their  
20 analysis of the potential liability of all persons and entities, the medical records reflecting the  
21 difficulty of proving causality, medical expenses incurred, and settlement amounts in cases with  
22 similar evidence and damages. Dkt. 59. Based on the stipulated facts and the report of  
23

1 Independent Counsel as outlined below, the Court agrees that the proposed settlement is  
2 reasonable and in the best interests of the minor child, M.W.

3 B. The Proposed Settlement

4 Plaintiffs agree to release all claims against Safeway arising out of their Complaint in  
5 exchange for \$12,000, an amount which includes payment of attorney fees and costs and  
6 subrogation to the insurer. Dkt. 49-2. The proposed distribution is as follows: \$296 to  
7 Equian/Molina in subrogation, \$6,679.23 to Plaintiffs' counsel George Luhrs for fees and costs,  
8 and the remainder, \$5,024.77 in trust to M.W. Dkt. 49-6. Independent Counsel confirms that the  
9 distributions to Mr. Luhrs and Equian are supported by appropriate documentation and each  
10 distribution appears reasonable in amount. Dkt. 49-4 (letters and statements from Equian and  
11 Molina); Dkt 49-5 (itemized costs); Dkt 49-3 (contingent fee agreement). The remaining amount,  
12 \$5,024.77, will be distributed to a blocked account for M.W., payable to M.W. after he turns 18  
13 years old. Dkt. 51, p. 4. M.W.'s parents released their claims for damages. Dkt. 51, p. 4.

14 C. Stipulated Facts and Report of Independent Counsel

15 In March 2015, when M.W. was three years old, he was with his mother in the parking  
16 lot of the Rainier Valley Safeway when an employee, who was pushing multiple shopping carts,  
17 "negligently caused shopping carts to strike M.W." Dkt. 8-3, ¶ 7. At the time, M.W.'s mother  
18 was loading groceries in the car, and her five children were nearby. Dkt. 59, ¶ 3. Plaintiffs  
19 claimed personal injuries to M.W. and loss of parental consortium damages. Defendant denied  
20 these assertions. Plaintiff M.W. and his parents sued defendant in King County Superior Court  
21 and Defendant removed the case to this Court on the basis of diversity. Dkt. 8-1 (Redacted  
22 Amended Complaint); Dkt. 8 (Redacted Notice of Removal).

1 Plaintiffs claim that the alleged injury, which consisted of one or two blows to M.W.'s  
2 head from one or two shopping carts, resulted in the primary complaint that M.W. suffered  
3 headaches. However, medical evidence linking the blow or blows to headaches or any other  
4 condition was debatable due to other potential medical causes. After reviewing photos of the  
5 shopping cart, school and medical records, and the depositions of M.W.'s mother and father,  
6 defense expert Lauren L. Plawner, M.D., Board Certified Neurologist, concluded that the  
7 medical evidence did not support a probable medical causal relation between the alleged blows  
8 and the headaches or other conditions. Dkt. 49, Exhibit 1 ("The Plawner Report"). Dr. Plawner  
9 identified the primary alternate cause of M.W.'s headaches as his diagnosis of sagittal  
10 craniosynostosis. This is premature fusion of the sagittal suture that runs from the front to the  
11 back at the top of the skull, which forces the head to grow long and narrow, can increase pressure  
12 to the brain, and can cause headaches.

13 Attorney Luhr also reviewed the medical evidence, depositions, and the Plawner Report.  
14 According to his review, M.W.'s medical record indicates that his doctors share the working  
15 hypothesis that craniosynostosis was the probable cause of M.W.'s headaches, and none of  
16 M.W.'s physicians stated the opinion that the shopping cart blow caused headaches beyond the  
17 immediate time of the incident. Dkt. 50, Luhrs Decl., ¶ 5; and Dkt. 49, Exhibit 8 (2/3/17 clinic  
18 note from Seattle Children's Hospital in which M.W.'s doctor links pressure from  
19 craniosynostosis as the likely cause of M.W.'s headaches).

20 A July 26, 2015 CT Scan of M.W. was negative for brain injury, but showed maxillary  
21 and ethmoid sinusitis, which provides yet another medical explanation for M.W.'s headaches,  
22 since both types of sinusitis are associated with headaches. Dkt. 50, Luhrs Decl., ¶ 6 (citing  
23 <https://www.healthline.com/health/acute-sinusitis>, re maxillary sinusitis symptoms including

1 headaches, and <https://www.healthline.com/health/acute-sinusitis-re-ethmoid-sinusitis-symptoms>  
2 including headaches).

3 Independent Counsel concluded that M.W. has potential legal claims for personal injury  
4 as the incident occurred in a Safeway parking lot and was caused by a Safeway employee. Dkt.  
5 59, ¶ 6. Thus, M.W. may potentially recover damages for his pain and suffering, his mother may  
6 potentially recover damages for emotional distress, and both his parents may potentially recover  
7 for loss of consortium. *Id.* However, Independent Counsel also concludes it is unlikely Safeway  
8 would be found liable for M.W.'s continuing symptoms. Review of M.W.'s medical records  
9 confirms M.W. has sagittal synostosis, a condition that pre-dates the accident, results from  
10 premature fusion of the skull, and has not been treated by surgery. M.W.'s brother also has  
11 sagittal synostosis and suffers from headaches. Dkt. 59 at 4-5 (discussion of incident, potential  
12 legal claims, injuries, and medical records). Further, because the incident occurred around 10:00  
13 p.m., when M.W. and his four siblings were outside their mother's care while she loaded bags of  
14 groceries, Independent Counsel notes that Safeway could plausibly argue that any recovery for  
15 M.W.'s injuries should be reduced by comparative fault. *Id.*

16 Attorney Luhrs determined that a substantial investment would be required to secure  
17 supporting medical testimony, and that such an investment would not necessarily produce a  
18 convincing response to Dr. Plawner's opinion. Dkt. 50, Luhrs Decl., ¶ 7. Based on the evaluation  
19 of their counsel, Plaintiffs opted to settle for what amounted to a nuisance amount of \$12,000.00,  
20 subject to court approval of minor settlement. *Id.*, ¶ 8. Dkt. 51, Declaration of Haja Sillah, ¶ 3;  
21 Dkt. 49, Exhibit 2 (Settlement Agreement). The investigation of Independent Counsel  
22 recommends approval of the \$12,000.00 proposed settlement amount based on an research of  
23 cases with similar evidence of causality and damages, which have comparable damages awards.

1 Dkt. 59, ¶ 11 (citing *Hickok-Knight v. Wal-Mart Stores, Inc.*, 168 Wn. App. 1032 (2012)  
2 (\$6,433.35 in damages where shopping cart ran over Plaintiff's foot and caused a bruise)  
3 (unpublished); *Hutson v. Rehrig Int'l, Inc.*, 119 Wn. App. 332, 80 P.3d 615 (2003) (\$15,000 in  
4 damages for shopping cart injury)).

5 Haja Sillah is authorized to speak for her husband Dembo Waggeh, who is currently  
6 working on a fishing boat in Alaska, and for M.W., who is now seven years old. Dkt. 51, Sillah  
7 Decl., ¶ 2. Ms. Sillah cannot read English, but understands English if the person speaking takes  
8 the time to explain, something she says Attorney Luhrs did when he read the settlement  
9 agreement and answered her questions regarding the settlement agreement. *Id.* All the referenced  
10 exhibits were read to her in English and in Soninke when needed, by Souleymane Camara, who  
11 also explained anything she did not understand. *Id.*, ¶ 8.

12 At the time of the settlement agreement, Ms. Sillah and her husband consented to the  
13 placement of all funds, after deduction of fees and costs and the payment to Molina, into a  
14 blocked account for M.W. They agreed to do this because "this case was always for M.W. and  
15 also because Safeway counsel indicated Safeway placed no value" on the parents' claims. *Id.*  
16 Ms. Sillah affirmatively states that she and her husband Dembo relinquish all of their claims and  
17 agree that funds payable to M.W. shall be placed into a blocked account payable only to M.W.  
18 after he reaches 18. Dkt. 51, Sillah Decl., ¶ 6. Ms. Sillah is also aware that while she or her  
19 husband could petition the Court to withdraw funds for an urgent necessity for M.W., it would be  
20 very rare that such a request would be granted. *Id.* Independent Counsel recommends that any  
21 order directing funds into a blocked account should recite that the funds are payable upon further  
22 order of the Court or to the affected person at his age of majority. In addition, to preserve M.W.  
23 and his family's eligibility for means-tested benefits, Independent Counsel recommends

1 Plaintiff's counsel should ensure that the settlement funds are not reasonably available to either  
2 M.W. or his parents, until M.W. reaches 18 years of age. Dkt. 59, ¶ 13.

3 Attorney Luhr's representation of Plaintiffs has been under a contingent fee agreement  
4 providing for a fee of 1/3 of recovery and reimbursement of his litigation expenses. See Dkt. 49,  
5 Exhibit 3 (Fee Agreement). While not spelled out, counsel takes a fee from Plaintiffs only on any  
6 recovery to Plaintiffs, not on recovery to subrogated interests. Dkt. 50, Luhrs Decl., ¶ 10. In this  
7 case, Attorney Luhrs' 1/3 fee is on the gross recovery minus the payment to subrogated interests,  
8 after which expenses are reimbursed. Subrogated interests have also agreed to pay and are  
9 arguably legally obligated to pay a 1/3 fee and ratable share of litigation expenses. *Id.*  
10 Independent Counsel finds that the attorney fees and costs in this matter are documented and  
11 appear reasonable. Dkt. 59, ¶ 12.

12 Molina Health Care of WA has an arguable subrogation/reimbursement claim for medical  
13 expenses paid for treatment of M.W. Attorney Luhrs negotiated with Equian, the representative  
14 of Molina, a reimbursement figure of \$667.58 gross and \$296 net after deduction of fees and  
15 costs. Dkt. 50, Luhrs Decl., ¶ 13; Dkt. 49 (Equian letters of 7/11/19 (with bill) and 7/19/19).  
16 Independent Counsel believes this is a reasonable negotiated settlement amount and makes no  
17 recommendation for retention in an attorney's trust account. Dkt. 59 at ¶ 8.

### 18 CONCLUSION

19 Based on the foregoing, the Court finds that the proposed settlement amount and  
20 disbursements stipulated to by the parties and reviewed by Independent Counsel are reasonable  
21 and in the best interests of M.W. Accordingly, it is hereby **ORDERED**:

22 (1) The Stipulated and Supplemental Stipulated Motions for Approval of Minor  
23 Settlement (Dkts. 49 and 60) are **GRANTED**;

(2) Plaintiffs Haja Sillah and Dembo Waggeh shall execute a release of claims against Defendant on behalf of themselves and their minor son M.W., in exchange for Defendant's settlement payment of \$12,000.00, which shall be placed in the trust account of Attorney Luhrs.

(3) The following disbursements from the \$12,000.00 settlement payment deposited into Attorney Luhrs' trust account, are approved:

- (a) \$4,000.00 to Attorney Luhrs' business account for the payment of attorney's fee;
- (b) \$2,679.23 to Attorney Luhrs' business account for the payment of litigation expenses;
- (c) \$296.00 to Molina Health Plan of WA through their representative Equian, in full satisfaction of medical expenses paid for the medical care and treatment of M.W.;
- (d) \$5,024.77 to a blocked account with interest for the benefit of MW, which is the amount remaining after the above listed disbursements, payable only to M.W. after his 18th birthday or on further Order of this Court.

DATED this 19th day of September, 2019.

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BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge